

Comments

Notice of Proposed Rule Making and Order
FCC 02-8
CC Docket No. 02-6

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Kellogg Consulting has been assisting schools in the state of Oklahoma with the E-rate program since its inception. We assisted over 120 schools in filing Form 471 applications for funding year 5.

The following are our comments in response to NPRM FCC 02-8

Paragraph 14: Eligible Services

The computerized list of services is an excellent idea. The "service description" field could be added to the funding request record on the Form 471. We suggest that the list should be a duplicate of the eligible services list that is already posted on the Administrator's web site. The computerized list could be updated in the same manner as the eligible services list. The eligible services list has been the guiding list for 5 years of the program and has been properly revised each year. Since the eligibility of an item must still be ultimately shown by the documentation included in the attachment pages, the conditional items and any newly introduced products or services will be reviewed for eligibility based on the documentation submitted by the applicant.

In order to make it easier to use the list, each service/product description could be assigned a number. For example, telephone (POTS) service might be numbered T001 (Telecommunications-number 1). The applicant could then key in either the item description "Telephone" or the number "T001". Internet Access services could be number I001, and Internal Connections C001, C005, C010, etc. If numbering is used, the Administrator may want to consider using an initial numbering scheme that provides room for additions. For example, the numbering sequence could initially be by 5s so that new services could be added alphabetically within the list.

Paragraph 21-wireless telephone service. It is our opinion that the current rules do favor wireline technology over wireless technology. Under the current rules, wired telephone service for all support staff is eligible for discount, but wireless telephone service (cellular phone service) is only eligible for certain support staff. We recommend that the rules be modified to allow discounts on wireless telephone services used by all support staff. This will also eliminate abuse in the current system in which cellular phones that are used by support staff are described as "administrative use" in order to receive discounts.

Paragraph 22-voice mail service. We agree that the eligibility rules should be modified to include voice mail. We agree with the Commission's reasons that making voice mail an eligible service will streamline the application review process and will promote a more fair and equitable distribution of the program's benefits.

Paragraph 25-Internet content. We do NOT believe that the Commission should modify the rules regarding Internet content if the package provides the most cost-effective Internet access. The change in rules will greatly increase the administrative burden as well as increase fraud and abuse in the system. Providers of Internet content may join in to take advantage of this change, and the Administrator will have to provide guidelines and audit methods in order to compare other Internet packages. Because of the new "loop hole" and in order to compete, many Internet providers might add content to their packages to get in on the

additional income. Thus there could very well not be any “non content” Internet packages available to the schools and libraries and the cost to the program will increase.

Paragraph 27-30% benchmark. We believe the 30% benchmark should continue to be utilized. This creates a fair result in case an applicant inadvertently includes ineligible items in their request and still provides for funding for eligible services. It also encourages applicants to separate out ineligible items before applying for discounts. Additionally, it reduces the administrative burden of sorting through eligible and ineligible items.

Paragraph 29-Compliance with the Americans with Disabilities Act. We do NOT believe that the applicants should be required to certify compliance with ADA. This would be a duplication of federal and state regulations which already require Schools and Libraries to comply with ADA. In our opinion, the additional certification will only increase administrative burden on the program without any changes to the compliance with ADA since schools and libraries are already required to comply.

Paragraph 31-Consortia. We support the proposed change to section 54.501 (d)(1) since it will result in a more fair and equitable distribution of discounts to eligible schools and libraries who are part of a consortia. This change, however, will increase the administrative burden since the Administrator will have to review documentation from the applicant to prove that only the schools and libraries in the consortia will receive discounts.

Paragraph 33-Choice of payment method. We do NOT believe that the service providers should be required to provide discounts. Some of the smaller service providers that we work with do not have the systems and/or staff to handle discounting bills and submitting invoices to the Administrator. This requirement would create an undue burden on the smaller service providers and should not be approved.

Paragraph 35-Enforcement procedure for remittal of BEAR payments. We strongly agree that service providers should be required to remit payments to the applicants within twenty days of having received them. The Commission may want to consider adding a 10 day grace period before fining the provider. Thus if the funds aren't forwarded within 30 days, the service provider will be subject to fines and forfeitures.

Paragraph 40-Equipment Transferability

We agree that the Commission should adopt a rule to deny discounts for internal connections to any entity that has already received discounts on internal connections. We also strongly agree that there should be a time period and specified threshold. Since technology frequently needs to be updated, we believe a 3 year time period would be sufficient. Thus schools who have received funding for internal connections above a certain total amount in funding years 2,3, and 4 would not be eligible for discounts on internal connections in funding year 5. If the threshold amount is based on cost per student a cost could be determined that would be fair and equitable. The cost per student threshold would be an excellent method since the Administrator already has total student data as well as total amounts funded for internal connections. The Commission may need to designate a committee to research what the cost threshold should be based on previous funding for individual schools. We have found that schools in the high discount ranges tend to be “preyed on” by service providers and in many instances these schools have installed more internal connections than they need. Additionally, schools who did not participate in funding years 1 and 2 of the program and who are in the 70-80% discount range desperately need funding for internal connections.

Paragraph 47-Use of excess services. Any changes to allow use of services for non-educational purposes will open up the program to fraud and abuse. Unless the Administrator is able to do an on-site audit and a detailed study of the situation, this provision could be easily abused. We agree that the waiver for the Alaska connections was a fair and equitable decision. However, in the Continental United States, there are very few areas that are as remote as Alaska. The majority of the schools we work with are in the state of Oklahoma and we have schools in very remote areas. However, even the most rural communities have telephone service and as a minimum dial-up Internet access. We do NOT believe there should be any modifications to the existing rules to allow non-educational use of excess services. We do agree that waivers of section 54.540(b)(2)(ii) should be granted based on need on a case by case basis.

Paragraph 51-Appeals Procedure. We strongly agree that the Commission should increase the time limit for filing an appeal to 60 days.

Paragraph 52-Post Mark date. We agree that the appeals to the Administrator or to the Commission should be treated as having been received on the date they are post-marked rather than the date they are filed.

Paragraph 56-We support the option for the Administrator to rely on any other funds that remain from the current funding year first, including funds that had never been committed and funds that had been committed but were never used by the original recipients.

Paragraph 57-We also support the funding of Priority One funds immediately upon approval, and only holding the Priority Two services until the Administrator is certain that sufficient funds remain. Most of the time, the school or library is obligated to pay for Priority One services and must incur the costs without the benefit of discounts. The Priority Two services, however, are usually subject to funding and the school does not have to incur costs until the school receives funding.

Paragraph 59-Independent audits. We suggest that the Commission consider designating a committee to research the best method for auditing. The Commission could seek advice from public accounting firms and other federal agencies who perform audits on a regular basis. To reduce costs, the independent audits may take the form of a two-tier approach. The first level of audit would be an off-site audit where the applicant is required to provide supporting documentation (such as invoices, pictures of installation, third party confirmation, etc.). If the applicant and/or service provider is still unable to prove they are in compliance with the program, then they would be subject to the second level of audit which would require an on-site audit and the cost would be assessed to the school and service provider involved.

Paragraph 61-Prohibitions on Participation. We support any provisions to bar entities who willfully or repeatedly fail to comply with statutory and regulatory requirements from participating in the program. Fraud and abuse of the program greatly hurts the schools and libraries who are supposed to benefit from the program, and places the entire program in jeopardy. We believe an appropriate period of time in which the individual would be unable to participate in the program would be 3 years. We also agree that the prohibition would need to apply to individuals since otherwise the individuals could simply join or form a different entity.

Paragraph 65-Unused funds. In many instances we have found that applicants end up not using funds due to inadvertently missing deadlines for filing Forms 486 and 472. We suggest that the Administrator could reduce the level of funds that go unused by sending out timely notices. The Administrator has recently started sending notices approximately 30 days before final filing deadlines. These notices have been extremely helpful. However, in some cases these notices have been received by the applicant too late to meet the deadline. Additionally, the notices are often sent to the contact on the original Form 470 and not to the two contacts listed on the Form 471. Thus the proper contact does not receive the notice until after the deadline. We recommend that the Administrator send notices out twice during the funding year. The first notice could be sent out approximately 3 months after the funding letter. The first notice would remind applicants to file Form 486 for those services they intend to use, and to file Form 500 to cancel or reduce funding requests. We suggest that the second notice be sent out at least 60 days prior to the final deadline to allow the applicants time to properly respond. All notices need to be sent to both contacts listed on the Form 471.

A second problem that we have experienced is the long delay between receipt of an Administrator's decision on appeal and the receipt of the actual funding letter. There is such a long period of time between the two that frequently funds go unused because the applicant never received the funding letter or it was sent to the old 470 contact. We suggest that the Administrator be required to issue a funding letter within 2 weeks of the Administrator's Decision on Appeal and that the letter be sent to both contacts listed on the related Form 471.

A third problem that occurs is with notification of SPIN changes. We suggest that the Administrator send notifications of SPIN change approvals to the applicant in writing. We find that all too often the applicant is waiting for the SPIN change, then forgets that they never filed the necessary forms to receive reimbursement. Currently, the Administrator sends a notice in the form of a funding letter to the new service provider, but there is no notification sent to the applicant. We recommend that the Administrator send a written notification to the applicant whenever a SPIN change is approved.

The fourth problem with unused funds is the long delay in processing appeals. Since the appeals process frequently takes over a year, in many cases the original contact is no longer at the school or library or when the letter finally arrives, the applicant does not know what it is for. We recommend that the Administrator send out quarterly reports on the status of the pending appeals to the applicant. This will serve as a reminder to the applicant that the funding request is still being processed and will also ensure that the applicant will know what the Administrator's decision on appeal is for when it finally arrives.

Paragraph 70-Treatment of Unused Funds. We strongly agree with the second option to modify the rule to require expressly the distribution of the unused funds in subsequent years of the schools and libraries program, in excess of the annual cap.